IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

JOHN ALBERT STANGEL

v.

§ CIVIL ACTION NO. 6:08ev346

WARDEN BAKER, ET AL.

$\frac{\text{MEMORANDUM ADOPTING REPORT AND RECOMMENDATION}}{\text{OF THE UNITED STATES MAGISTRATE JUDGE}} \\ \underline{\text{AND ENTERING FINAL JUDGMENT}}$

The Plaintiff John Stangel, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On September 9, 2008, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed because Stangel has three strikes within the meaning of 28 U.S.C. §1915(g), and did not pay the filing fee nor show that he was in imminent danger of serious physical injury. Stangel did not file objections to the Report; instead, on September 12, 2008, he filed a motion asking that his lawsuit be voluntarily dismissed. The Court has reviewed this motion and has determined that it should be granted. The Court notes that the Magistrate Judge's Report was in fact correct, but that in the interests of justice the lawsuit should be dismissed based upon Stangel's motion to dismiss under Rule 41(a), Fed. R. Civ. P. It is accordingly

ORDERED that the Plaintiff's motion for voluntary dismissal of his lawsuit (docket no. 6) is GRANTED and that the above-styled civil action be and hereby is DISMISSED without prejudice on the motion of the Plaintiff. It is further

ORDERED that any and all motions which may be pending in this action are hereby

DENIED.

So ORDERED and SIGNED this 24th day of September, 2008.

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LEONARD DAVIS UNITED STATES DISTRICT JUDGE